TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1966

No. 275 13

STEPHEN R. WAINWRIGHT, PETITIONER,

vs.

CITY OF NEW ORLEANS, LOUISIANA.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

PETITION FOR CERTIORARI FILED JUNE 21, 1966

CERTIORARI GRANTED JANUARY 9, 1967

SUPREME COURT OF THE UNITED STATES

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[fol. 1]

IN THE CRIMINAL DISTRICT COURT

FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

B-80503

CITY OF NEW ORLEANS, STATE OF LOUISIANA,

vs. Number #189-939 "E"

STEPHEN R. WAINWRIGHT.

APPLICATION FOR WRITS OF CERTIORARI, PROHIBITION AND MANDAMUS TO THE SECOND MUNICIPAL COURT, CITY OF NEW ORLEANS, STATE OF LOUISIANA—Filed May 11, 1965

Dan A. Spencer, 3420 Greenwood Road, Shreveport, Louisiana, Attorney for Stephen R. Wainwright.

5-13-65

Writs Refused
S. Marchese, Minute Clerk.

[fol. 2] To the Honorable the Judges of the Criminal District Court of the Parish of Orleans, State of Louisiana:

The petition of Stephen Reed Wainwright, defendant in a case entitled "City of New Orleans vs. Stephen Reed Wainwright, No. B-80503 on the Docket of the Second Municipal Court of the City of New Orleans, respectfully shows:

Statement of the Case

The defendant is charged in three affidavits with violations of municipal ordinances of the City of New Orleans,

[File endorsement omitted]

being ordinances Nos. 828 MCS, Sections 49-2, relative to resisting arrest, 42-85 :3, relative to loitering and 49-7, relative to reviling the police. It is alleged in the affidavits that the defendant violated the said ordinances on Tuesday, the 13th day of October, 1964.

On December 4, 1964, the trial of this case was begun and two witnesses were heard. The witnesses testified to the character of the defendant and the fact that he was and had been on the date of the alleged offense a student in the School of Law at Tulane University. Following the testimony of the two character witnesses, the court ordered the trial of this matter continued indefinitely, over the strenuous objection of counsel for defendant. Sometime in the month of April, 1965, subpoenas were issued to the defendant and his attorney ordering the continuance of the trial herein. The trial was set to resume on the 7th day of May, 1965.

At the commencement of the trial a number of witnesses for whom subpoenas had been requested by the defendant were not present in open court. The court refused to issue attachments for these witnesses although it did see fit to sequester the dean at the Tulane University School of Law, a prospective character witness for the defendant, putting him in a private office, by himself. Following the swearing of one of the city's witnesses, and some testimony by him, the case was thereupon continued to the 14th day of [fol. 3] May, 1965, once more over the strenuous objections of counsel for defendant.

During the course of the testimony at the trial on the 7th day of May, 1965, the defendant was forced to stand at attention before the dock and threatened by Judge Andrew Bucaro, the Judge of the said court, with being placed in jail for contempt if he moved.

In continuing the case to the 14th day of May the Judge stated that he was doing so in retaliation for the defendant's having turned around while standing before the dock. He further stated that the fact that counsel for de-

fendant was from Shreveport and would be forced to return again to the City of New Orleans to resume the trial made no difference, as he (the Judge) "understood that the defendant's father was a successful attorney and could afford counsel's fee". He further stated that the fact that the defendant would be in the midst of taking final exams in the Tulane Law School at the time of the trial would make no difference. The case was continued.

Ground on Which the Supervisory Jurisdiction of This Court Is Invoked

Petitioner shows that no appeal lies from the judgments and actions complained of and further shows that he will suffer irrevocable injury as a result of these judgments and actions unless remedial writs are granted by this Honorable Court for the following reasons:

The Issues

This case is a prosecution by the City of New Orleans for the violation of municipal ordinances. The issues and questions of law involved are:

1. Whether the continuance of this case from time to time over a period of five months for the obvious reason of imposing summary punishment on the defendant constitutes a violation of the defendant's constitutional rights to a fair and impartial and speedy trial and due process of law.

[fol. 4] 2. Whether the forcing of the defendant, who is partially incapacitated by duodenal ulcers and a back injury, to stand at attention before the dock of the court in such a manner as to impose summary punishment constitutes a violation of his constitutional immunity from cruel and unusual punishment and his right to due process of law and to be presumed innocent until proven guilty.

3. Whether a trial Judge may intimidate a defendant and his counsel with threats to hold the defendant in con-

tempt of court for actions which would not, in the eyes of reasonable men, infer any lack of respect for the court.

4. Whether the defendant may be constitutionally deprived of his right to compulsory process for the attendance of witnesses in his favor.

Assignment of Errors

1. The court erred in continuing the trial for a period of over five months.

2. The court erred in continuing the trial on May 7, 1965, as a means of retaliation against the imagined lack of respect of the defendant for the court.

3. The court erred in continuing the trial on May 7, 1965, as a means of imposing summary punishment on the defendant without due process of law.

4. The court erred in failing to issue instanter subpoenas or attachments for absent witnesses subpoenaed by the defendant.

5. The court erred in forcing the defendant, who is not in good health, to stand at attention before the dock of the court, this being a mediaeval practice long since discarded by the courts of this country.

6. The court erred in attempting to intimidate defendant and his counsel with threats of jailing defendant for contempt.

[fol. 5] Argument on Assignment of Errors

This proceeding in the municipal court in the City of New Orleans constitutes a flagrant and shameful travesty of justice. From the time of defendant's arrest in this case, his rights have been totally ignored. After being brutally and unjustifiably beaten by the New Orleans Police Department, defendant was denied the right to confer with his counsel or obtain medical assistance for a period

of several hours. When his attorney attempted to see him shortly after his arrest, the attorney was ordered from the police station, arrested for refusing to leave it without seeing his client, and jailed.

On the evening on which defendant was arraigned in the municipal court, undersigned counsel, the same attorney who was arrested by the police on the previous night, was informed by one Judge of the Municipal Court that in any case before that court in which the complainant was a policeman, there would be a conviction whether the defendant be an attorney, a priest or of impeccable character and despite any testimony of the defendant's innocence. The Judge gave as a reason that he and the other Judges of the Municipal Court could not be reelected without the support of the New Orleans Police Department and that, consequently, the Judges of that court must, of necessity, support the policemen, whether they were right or wrong. When defendant's attorney went to trial on the charges against him in the Municipal Court, he was asked to attend the chambers of the presiding Judge. He was there given cause to believe that unless he dropped any action he might be contemplating against the policemen involved, he would be convicted. When he refused to drop the action against the policemen, he was convicted on a record devoid of any evidence of guilt. Attempts were made by the Judge and the City Attorney to prevent him from taking an appeal. Immediately prior to the commencement of that trial, the presiding Judge had been visited in his office by the Superintendent of Police, who was a witness in the case, and both the defendant and his associate counsel were denied the right to be present at the conference.

[fol. 6] An appeal was ultimately perfected to this Honorable Court, being Case No. 188-368 of Section E of this Court. The Honorable Rudolph F. Becker, Jr. acquitted undersigned counsel of any wrongdoing in that case.

Counsel has been informed by the City Attorney's office that in any case before the Municipal Court, it is the duty

of the City Attorney, as much to protect policemen from possible civil actions as it is to obtain convictions of guilty persons.

The foregoing recitation has been provided to give the court the background on this case and the environment in which it has been conducted. This can hardly be said to have been a fair and impartial trial to date.

The errors of the trial Judge set out above constitute, in the opinion of counsel, an attempt to summarily punish the defendant for charges he has made against members of the New Orleans Police Department. The expenses of defense in this case, exclusive of attorney's fees, will nearly exceed the maximum fine which could be imposed upon the defendant should he be found guilty. It would seem that justice in the City of New Orleans places a much higher cost on proving one's innocence than in pleading guilty to totally unfounded and unwarranted charges, at least in the Municipal Court.

Unless this Honorable Court grants the writs here applied for, the defendant will be further unjustly damaged in the Municipal Court. He will be forced to stand at attention, possibly for hours, before the dock of the court. He will be forced, while in the midst of his final exams in his last semester of law school to come again and again to the municipal court, there to be unfairly abused with threats of jail for any slight movement. His attorney will be forced, one knows not how many more times, to journey from Shreveport to New Orleans to hear perhaps half the testimony of one witness, if that, on each trip. The defendant could hardly obtain new counsel in the middle of the trial. Defendant will be deprived of his right to obtain witnesses in his favor by the refusal of the trial court to issue subpoenas.

[fol. 7] Wherefore, petitioner prays that his application for remedial writs be filed in this Honorable Court and that writs of Certiorari, Prohibition and Mandamus issue herein ordering and commanding the Judge of the Second

Municipal Court of the City of New Orleans to send forthwith the original records of the above case to this court for reviewing of the judgments and actions of the said Judge of the Second Municipal Court and prohibit the said Judge from proceeding further in this case and the respondent from prosecuting it further until the judgment be pronounced herein on the regularity of these proceedings. That the aforesaid Judge of the Second Municipal Court and the respondent, the City Attorney, be ordered to show cause in this court at a day and hour to be fixed by the court, why the Honorable Andrew Bucaro, Judge of the Second Municipal Court, should not be ordered:

1. To commence immediately and with twenty-four (24) hours the trial of this case and the taking of evidence therein and to proceed from minute to minute and hour to hour until such time as all of the evidence has been heard and judgment rendered.

2. To cease and desist from having the defendant stand at attention at the dock of the court and to allow him to be seated during the course of the trial.

3. To cease and desist from threatening either defendant, or his counsel, with holding them in contempt unless it should be necessary to do so to maintain order in the court room.

4. To issue instanter subpoenas or attachments for any witnesses for whom subpoenas were requested by defendant or his counsel and who were not present in court at the commencement of the trial.

Dan A. Spencer, Attorney for Petitioner, 34 Greenwood Road, Shreveport, Louisiana.

[fol. 8]

CRIMINAL DISTRICT COURT

FOR THE PARISH OF ORLEANS

SECTION .....

NUMBER .....

CITY OF NEW ORLEANS,

VS.

STEPHEN R. WAINWRIGHT.

In re: Stephen R. Wainwright, applying for writs of Certiorari, Prohibition and Mandamus:

The petition of the relator in the above entitled and numbered cause, having been duly considered;

It is ordered that a writ of Certiorari issue herein, directing the Honorable Andrew Bucaro, Judge of the Second Municipal Court of the City of New Orleans to transmit to the Criminal District Court for the Parish of Orleans on or before the _____ day of _____, 1965, the record, or a certified copy of the record, of the proceedings complained of by the relator herein, to the end that the validity of said proceedings may be ascertained.

It is further ordered that the aforesaid Judge of said court and the respondent, City Attorney of the Municipal Court, show cause, in this court, on the date aforesaid at _____ o'clock _____.M., why the relief prayed for in the petition of the relator should not be granted.

It is further ordered that the aforesaid Judge be and he is hereby enjoined by proceeding further in this case

until judgment shall be pronounced on the regularity of his proceeding.

Granted at New Orleans, Louisiana, _____, 1965.

_____, Judge

[fol. 9] State of Louisiana,
Parish of Caddo:

Dan A. Spencer, being duly sworn, deposed and said that he is Attorney for the petitioner in the above and foregoing application for remedial Writs of Certiorari, Prohibition and Mandamus; that all of the facts set forth therein are true and correct; that a copy of the application has been mailed to the City Attorney, postage prepaid and a copy has been mailed to the respondent Judge of the Second Municipal Court, Honorable Andrew Becker, postage prepaid.

Dan A. Spencer.

Sworn to and Subscribed before me, this 10th day of May, 1965.

E. E. Bland, Jr., Notary Public, Caddo Parish, La. My Commission Is for Life.

Let this application be filed and let an allotment of same be made May 17, 1965.

George P. Platt, Judge.

[fol. 10]

IN THE CRIMINAL DISTRICT COURT

FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

No. 189-939

SECTION "E"

CITY OF NEW ORLEANS, STATE OF LOUISIANA,

VS.

STEPHEN R. WAINWRIGHT.

WRITS REFUSED—May 13, 1965

Application for Writs of Certiorari, Prohibition and Mandamus to the Second Municipal Court, City of New Orleans, State of Louisiana.

New Orleans, Louisiana, this 13th day of May, 1965.

Rudolph F. Becker, Jr., Judge, Section "E", Criminal District Court, Parish of Orleans.

[fol. 11]

IN THE FIRST MUNICIPAL COURT

No. 83469-A

CITY OF NEW ORLEANS,

VERSUS

STEPHEN R. WAINWRIGHT.

CHARGES

Violation of Ordinance No. 828 M.C.S., Section 49-2, Relative to Resisting an Officer, Section 42-24, Relative to Disturbing the Peace by Assault on Patn. George O'Rourke, and Section 42-24, Disturbing the Peace by Assault on Patn. Frank Gilford.

TRANSCRIPT OF TESTIMONY AND NOTES OF EVIDENCE
JULY 16, 1965

Before the Honorable Andrew G. Bucaro, Judge.

On Behalf of the City and the Accused:

Present in Court: (10:45 o'clock A.M.)

1. Mr. Stephen R. Wainwright, Defendant, 36 South Street, Brocton, Massachusetts, represented by Mr. Dan A. Spencer, Attorney at Law, 3420 Greenwood Drive, Shreveport, Louisiana.

The following witnesses for the City of New Orleans:

2. Lt. F. Martello,
3. Patn. E. Boepple,
4. Patn. J. Ottesen,
5. Det. D. Kent,
6. Det. R. Townsend,

7. Patn. G. O'Rourke,
8. Patn. F. Gilford,

Present in Court: (11:20 o'clock A.M.)

9. Mr. J. B. Kiefer, Attorney at Law, National Bank of Commerce Building, New Orleans, La., representing the City of New Orleans.

Reported by: Gerry Heaton, Stenographer.

[fol. 12] Court: Mr. Kiefer telephoned the Court to say he was occupied in the District Court of Jefferson Parish, which is a Court of superior jurisdiction. Contacted his office twice, and Mr. Kiefer is not available for our telephone calls and has not replied. At this time I would like to state that all City witnesses that are listed on the affidavits, Lt. F. Martello, Patn. E. Boepple, Patn. J. Ottesen, Det. D. Kent, Det. R. Townsend, Patn. G. O'Rourke, and Patn. F. Gilford are all present in Court today.

Defendant is also present in Court. His attorney is present in Court. However, the City Attorney has informed the Court, through his office, that he is involved in a matter in the District Court of Jefferson Parish. Let the record show that the following City witnesses are all present in Court at this time:

1. Lt. F. Martello
2. Patn. E. Boepple
3. Patn. J. Ottesen
4. Det. D. Kent
5. Det. R. Townsend
6. Patn. G. O'Rourke
7. Patn. F. Gilford

[fol. 13] however the City Attorney is not available and therefore the matter is going to be re-set.

Attorney Dan A. Spencer: Mr. Wainwright has traveled a distance of seventeen hundred miles. I traveled three hundred miles to be here today. I would like to go to trial if at all possible.

Court: This is the information we have received from Mr. Kiefer's office, and we have made two attempts to contact him.

Attorney Dan A. Spencer: I am asking leave to file copies of letters written on July 7, 1965 to the Clerk of the Municipal Court, 500 N. Rampart Street, New Orleans, La., a copy of which was sent to Honorable Judge Bucaro, Municipal Court, Section B, 500 North Rampart St., New Orleans, La.; to Honorable Judge, Municipal Court, Section A, 500 North Rampart St., New Orleans, La., and a copy to my client Mr. Stephen R. Wainwright, 36 South St., Brockton, Massachusetts, and I now file in evidence this copy of letter requesting to be notified if the case was to be held today, in view of the fact that defendant was travelling from Massachusetts, and his attorney from Shreveport, Louisiana to be present today.

[fol. 14] Court: Let the record reveal all parties served, however, the City is not prepared because of the fact that Mr. Kiefer is in a Court of superior jurisdiction. That is the information received from his office. The Court is ready, willing and able to hear the matter.

Attorney Dan A. Spencer: I move that the case be dismissed for non-prosecution by the City.

Court: Motion is denied. Anything else you want Mr. Spencer.

Attorney Dan A. Spencer: No, sir.

11:20 o'clock A.M.—July 16, 1965

Court: Let the record indicate that the Court is now back in session to accommodate defendant and his attorney.

Court to Defendant Stephen R. Wainwright:

Q. Are you uncomfortable standing?

A. No, but if I would have to do it for a long period of time I would be very uncomfortable.

Court: Let the record show the Court, since contacted by Mr. Kiefer, was certain he had notice of this matter, but information received from Mr. Kiefer is he didn't receive [fol. 15] timely notice, and he was since notified by telephone.

Attorney J. B. Kiefer, representing the City of New Orleans: While I was present at the time of the arraignment, the cases had not been allotted, and that when they were allotted these cases were set for trial in the division to which they were allotted, and that this is an additional reason today, that I had absolutely no notice of the date upon which these matters were set for trial.

Court: Are you prepared for trial Mr. Kiefer?

Attorney J. B. Kiefer: I am not prepared for trial because I didn't know the matter was set for today.

Court: I would prefer granting it to you but I think I will not.

Attorney Dan A. Spencer: I move that the defendant be allowed to sit down because he has a bad back.

Stephen R. Wainwright, defendant, being duly sworn, testified:

Attorney Dan A. Spencer to Stephen R. Wainwright:

Q. State your name.

A. Stephen R. Wainwright.

Q. You have a physical disability?

A. I have a bad back.

Q. Any other physical disability?
A. I am presently under treatment for blood ulcers.
Q. Any further questions?

Attorney J. B. Kiefer: I have no objection.
Court: Have a seat Mr. Wainwright.
[fol. 16] Attorney J. B. Kiefer: I would like the witnesses to be sequestered.
I would like to call Lt. F. Martello.
Attorney Dan A. Spencer: I would like the City witnesses not to discuss the case amongst themselves until the matter is concluded.
Court: Call them back. (Witnesses enter Court) The Attorney for Defendant has requested that I instruct you not to discuss this matter, and you are so instructed.

Lt. Francis Martello, being duly sworn, testified:

Attorney J. B. Kiefer to Lt. Francis Martello:

Q. State your name please.
A. Lt. Francis L. Martello.
Q. You are a member of the New Orleans Police Department, so employed on Friday, October 13, 1964, at approximately one o'clock A.M.?

Attorney Dan A. Spencer: I object.
Court: Answer the question.

A. Yes.

Attorney J. B. Kiefer to Lt. Francis Martello:

Q. Do you recognize defendant in Court?
A. Yes.
Q. Where is he?
A. Sitting in the first seat of the first row.
[fol. 17] Q. Please tell the Court when you first saw him on or before the date of October 13th, 1965.

I wish at this time to amend the record to reflect 1964 instead of 1965.

Court: Hand me the record and I will amend it to read 1964. The Court feels that this is a typographical error.

Attorney J. B. Kiefer to Lt. Francis Marcello:

Q. In that regard it is your testimony you were so employed by the New Orleans Police Department on the 13th day of Friday, October, 1964?

A. Yes.

Q. Please tell the Court when, on, or before that date you first saw the defendant and where?

A. I saw the defendant in the First District Station.

Q. When you first saw him?

A. In the First District Station.

Q. That was the first time you had seen him that day?

A. Yes.

Q. You hadn't seen him before you came to the First District Station?

A. Correct.

Q. In what capacity were you serving in the First District Station?

A. Lieutenant on platoon.

Q. Under what circumstances did you see him in the [fol. 18] First District Station?

A. He was under arrest.

Q. Do you recall the arresting officers?

A. Yes. Officer Boepple and Officer Ottesen.

Q. Please tell the Court what you observed at that date and time.

A. He was under arrest by Officer Boepple and Officer Ottesen. He was placed in the booking cage, and he was booked, and I had asked him to remove his jacket, which is part of the booking procedure, which is outlined in the manual of the New Orleans Police Department.

Mr. Wainwright refused to take his jacket off. I explained all prisoners must be thoroughly searched and he

should cooperate with us by removing his jacket for identification purposes, and also for any weapons, which a person may have on him at the time he is booked for the security of the prisoner and the Police Officer.

He again refused to take his jacket off, so I instructed him I would have the jacket removed by the doorman.

[fol. 19] He again refused. He walked into a corner grabbed his jacket by his hands, folding his arms, and he said, "If you want this jacket off take it off".

Q. Please show the Court just what you mean.

A. (Lt. Martello demonstrates) He went into the corner crouched down, and he said, "If you want this jacket off take it off". I instructed Officer Gilford and Officer O'Rourke to remove his jacket.

Q. Did he give you any reason why he didn't want his jacket removed?

A. He said that he was a law student. He knew the law and he didn't want the jacket off.

Q. Proceed.

A. Officer O'Rourke and Officer Gilford asked him to take the jacket off and he didn't respond, so they physically took the jacket off of him. He done everything in his power to keep them from removing the jacket. In this operation the officers were bounced from wall to wall physically, and with the assistance of a couple of other police officers they put handcuffs on one of his arms, and they removed his [fol. 20] jacket.

Q. No other questions at this time.

Attorney Dan A. Spencer to Lt. Francis Martello:

Q. Lt. Martello, how did you know the defendant was under arrest?

A. The officers told me he was under arrest.

Q. That is the only knowledge you had?

A. Yes, correct.

Q. Were you present when he was brought into the First District Station?

A. I was not present when he was brought in.

Q. Do you know how long he had been in there before you came in?

A. A very short while.

Q. Where was he in the Police Station when you first saw him?

A. In the Desk Sergeant's Room.

Q. That is behind the cage as one walks into the station?

A. No. Behind the cage there is a Desk Sergeant's booking area or cage, in the rear of that is a booking area. There is a walk-way, to the right is the Captain's room and to the left . . .

Q. This is a separate office?

A. Separate office.

Q. It is common practice to take a prisoner into the Desk Sergeant's office?

[fol. 21] A. It is. Yes. It depends on what he is charged with.

Q. A person charged with vagrancy, it is a common practice to take such a person into the Desk Sergeant's office?

Attorney J. B. Kiefer: I object.

Court: Let's hear him answer it.

Lt. Francis Martello:

A. It depends on the case. As a general rule more people are brought into the Desk Sergeant's area depending on what they are charged with. Traffic violations, no. If you want to question a person, yes.

Attorney Dan A. Spencer to Lt. Francis Martello:

Q. For what purpose was the defendant taken into the Desk Sergeant's office?

A. I wasn't present. I assume it was to question him.

Q. When you walked in was he being questioned?

A. I couldn't hear if he was. I wouldn't know if he was or not.

Q. Was he talking to someone when you came in?

A. When I walked into the station the officer came up to me and spoke to me.

Q. With regard to Mr. Wainwright?

A. That is correct.

[fol. 22] Q. What did he say to you?

A. He had Mr. Wainwright under arrest.

Q. Did he say anything else?

A. Yes, he did.

Q. What did he say?

A. He stated . . .

Attorney J. B. Kiefer: I object until he is identified.

Court: Who is the officer?

Lt. Francis Martello:

A. Officer Boepple.

Attorney Dan A. Spencer to Lt. Francis Martello:

Q. What did he say to you?

Attorney J. B. Kiefer: I object. Officer Boepple is here and can testify as to what he said.

Court: Answer the question Lt. Martello.

Lt. Francis Martello:

A. He said he had subject under arrest. He fit the general description of a subject who was wanted for murder. Also, the subject who was wanted for murder had a tattoo on his left arm "born to raise hell". He showed me a composite or drawing of one Johnnie McTaylor. He said that this man would not answer any questions concerning this investigation. He had asked this man on the scene to remove his jacket for the purpose of identification. This man was informed that he fitted the general description of a man wanted as a suspect in a murder case. This [fol. 23] arrested subject had no identification on him

whatsoever, was very belligerent; he attempted to walk off on three different occasions, and was possibly using subterfuge to evade the matter.

Q. Anything else?

A. I asked him to remove his jacket.

Q. This was in the Desk Sergeant's office?

A. Yes.

Q. What did he say then?

A. He demanded the right to use the telephone. He said he wasn't going to remove his jacket. I told him he has a right to use the 'phone. I said all right, we will book you first. He wanted to use the telephone. I told him you have to be booked before you can use the telephone. I told him he had to be searched before he could use the telephone. This is what he objected to.

Q. Do you know what the term frisk a prisoner means?

A. Generally on the street where you pat a person down for obvious weapons.

Q. Did you frisk the defendant in the police station?

A. No.

Q. Did anyone else in your presence frisk him?

[fol. 24] A. No.

Q. Do you know if Officer Boepple had frisked him prior to bringing him into the station?

A. No.

Q. Is it customary police procedure to do so?

A. Yes.

Q. You assume they had done so?

A. Yes.

Q. Does frisking a defendant reveal whether or not he has weapons on him?

Attorney J. B. Kiefer: I object.

Court: Sustained.

Attorney Dan A. Spencer to Lt. Francis Martello:

Q. Describe the jacket Mr. Wainwright had on.

A. I believe it was a real lightweight jacket.

Q. Very thin?

A. Yes, very thin.

Q. Do you know what he had on under it?

A. Not at that time, but after we took the jacket off we did.

Q. What did he have on under it?

A. A T-shirt.

Q. It wasn't possible for you to determine whether or not he had any weapons on him without taking the jacket off?

[fol. 25] A. No, sir.

Q. Do you take a person's pants off to search for weapons?

A. It depends on the case.

Q. How about vagrancy?

A. Yes, depending on the case.

Q. Always?

A. Not always.

Q. How many times in the last two weeks have you seen members of the New Orleans Police Department remove trousers to see if a person had weapons on him?

A. (No answer)

Q. Did you ask Mr. Wainwright to remove his trousers?

A. No, sir. No need to.

Q. Why no need to?

A. He was throughly searched by the competent doorman we have. I was satisfied.

Court: Were you searching for weapons or marks?

Lt. Francis Martello:

A. To determine whether or not he had a mark on his arm.

Court: Are "shakedown" and "frisk" related?

Lt. Francis Martello:

A. Generally speaking "shakedown" means frisk. Sometimes it is used to search a prisoner. It depends on the Officer.

Attorney Dan A. Spencer to Lt. Francis Martello:

[fol. 26] Q. You refused to allow Mr. Wainwright to use the telephone until his jacket had been ripped from him?

A. No I didn't refuse him; he had to be booked and searched.

Q. You didn't allow him to use the telephone?

A. He didn't make an issue of it.

Q. He did ask to use the telephone before he was searched?

A. Yes. I told him no he had to be booked and searched first.

Q. You refused him to use the telephone?

A. He used the telephone after he was searched.

Q. You refused to allow him before he was searched?

A. No.

Q. You testified that Mr. Wainwright crouched in a corner, held his jacket to him, now what did he do when Officers O'Rourke and Gilford tried to remove it?

A. He tried to keep it on by holding it.

Q. How?

A. By folding his arms. (demonstrates)

Q. He didn't do anything else?

A. No, not to my knowledge.

Q. If Officer O'Rourke and Officer Gilford got thrown [fol. 27] around the room, it was through their own effort?

A. No, it was the combined effort of Mr. Wainwright in his refusal to remove the jacket. Force was necessary to remove the jacket by the officers.

Q. He didn't do anything but try to hold the jacket on?

A. They tried to take it off, and he was trying to keep the jacket on.

Q. He held very still?

A. No, it was a struggle.

Q. Did he strike out at the officers?

A. No.

Q. Did he kick the officers?

A. I didn't see him. He could have. I didn't see him. It wasn't visible to me.

Q. How many officers were involved in an attempt to take his jacket off of him?

A. Officer Gilford, Officer O'Rourke, Officer Wilson and Mr. Kent—four.

Q. Lt. Martello, when you first entered the police station you were informed by the officer present that Mr. Wainwright refused to answer questions regarding this murder investigation?

Attorney J. B. Kiefer: I object.

Court: Permit the question.

[fol. 28] Attorney Dan A. Spencer to Lt. Francis Martello:

Q. When you first walked into the police station and was informed by the officer that Mr. Wainwright refused to answer questions regarding this murder investigation, didn't you say "Take that dirty S.O.B. in the interrogation room and take that jacket off of him"?

A. No.

Q. Did you say anything of the kind?

A. No.

Q. Did they take the jacket off of Mr. Wainwright on your command?

A. My sole command.

Q. Did you not curse Mr. Wainwright in the police station?

A. No.

Q. Was Mr. Wainwright asked if he wanted to call an attorney before he was searched?

A. No. He wanted to use the telephone.

Q. Did you assist the officers in taking his jacket off?

A. No, but I ordered it.

Q. You didn't touch him yourself?

A. No.

Q. What were the names of the other officers besides O'Rourke and Gilford?

A. Officer Kent and Officer Townsend, I believe.

[fol. 29] Q. How about Officer Boepple?

A. He was on the outside; so was Officer Ottesen, I believe. I am not sure. I could be wrong.

Q. Five of them?

A. Four or five. I am not positive.

Q. Did you see them strike Mr. Wainwright?

A. No.

Q. Did you see any of them knee him?

A. No.

Q. Did you see any of them twist his arm behind a bar?

A. No. What kind of a bar?

Q. A steel bar?

A. No steel bars in the First District. They had a handcuff on his arm. I don't know whether they twisted it or not. They could have.

Court: If they had twisted his arm, was there reason to?

Lt. Francis Martello: If they did it was logical in my opinion.

Attorney Dan A. Spencer to Lt. Francis Martello:

Q. Lt. Martello you testified that the primary purpose for removal of the jacket was for identification purposes, was that correct?

A. Correct.

Q. How did you plan to identify him by the tattoo?

A. Correct.

[fol. 30] Q. On what part of his body?

A. Left forearm.

Q. Were there any members of the New Orleans Police Department who, to your knowledge, could have identified this murder suspect had they seen him?

A. No. Not by sight but by investigation. In the line of investigation.

Q. How are composites drawn up, Lt. Martello?

A. By a specialist in the Police Department, who is a technician that we have, who interviews various witnesses and suspects and from their words he draws a picture or photograph.

Q. Do you know if the murder suspect had ever been arrested in New Orleans before?

A. Which one?

Q. The one you mistakingly identified Mr. Wainwright as?

A. It has never been clarified whether the man we were looking for as the murder suspect, is the man who committed the murder. It is still an open case.

Q. Lt. Martello, what was the name of the person you took Mr. Wainwright for?

[fol. 31] A. Johnnie McTaylor.

Q. Has he ever been arrested by the New Orleans Police Department before?

A. I don't know.

Q. Lt. Martello, is it not true that two police officers who could identify Johnnie McTaylor were on their way to the Police Station at the time you ripped the clothing off Mr. Wainwright?

A. I didn't rip the clothing off of him. I didn't know if these officers had specific knowledge they could identify him.

Q. Is it not true that these two officers were off their way to the station at the time?

A. I had no knowledge of this.

Q. Did you later learn that two such officers were on their way to the Police Station?

Court: The Court will rule the question is irrelevant and the Officer need not answer it.

Attorney Dan A. Spencer to Lt. Francis Martello:

Q. Lt. Martello did two officers, who could have identified the murder suspect, come to the First District Police Station on the night Mr. Wainwright was arrested?

[fol. 32] A. Two police officers from homicide who came to the First District Station—what knowledge they had, I don't know.

Q. You don't know whether or not they came there to identify Mr. Wainwright or not?

A. They were at the station. They were assigned to this case. Whether they could, or could not identify Mr. Wainwright as one Johnnie McTaylor I don't know.

Court: All information is in the record on the previous question. No objection by the City and the City permitted this information in the record later.

Attorney Dan A. Spencer to Lt. Francis Martello:

Q. Lt. Martello, before Mr. Wainwright's clothes were torn off of him, did any officer, Officer Boepple, or any one else, tell you they had called and some one was coming over to identify the defendant?

A. (No answer)

Q. No further questions.

Attorney J. B. Kiefer to Lt. Francis Martello:

Q. The First District, which is located at Basin and St. Louis Streets, is that in the City of New Orleans?

A. Yes. 501 N. Rampart.

[fol. 33] Q. How long have you been with the New Orleans Police Department?

A. I am in my seventeenth year.

Q. Describe to the Court the conduct of the defendant at the time of the incident?

Attorney Dan A. Spencer: I object. This has already been covered.

Court: This has been covered. Lt. Martello the officers who removed the jacket from Mr. Wainwright subsequent to what you called a struggle, did any of them have marks, bruises, or torn clothing?

Lt. Francis Martello: No.

Attorney Dan A. Spencer to Lt. Francis Martello:

Q. Lt. Martello, why didn't you file an affidavit against Mr. Wainwright for assault prior to May 14th of this year?

Attorney J. B. Kiefer: I object. The Office of the City Attorney.....

Court: Sustained.

Officer George O'Rourke, being first duly sworn, testified:

Attorney J. B. Kiefer to Officer George O'Rourke:

Q. State your name.

A. George O'Rourke.

Q. Are you a member of the New Orleans Police Department and so employed on Friday, October 13, 1964, at approximately 1:25 AM?

[fol. 34] A. Yes.

Q. Where were you serving at that time?

A. Doorman at the First District.

Q. In that capacity did you have any occasion to see the defendant? Do you recognize Stephen R. Wainwright?

A. Yes.

Q. Where is he?

A. That is Mr. Wainwright. (Pointing) That is Mr. Spencer. (Pointing)

Q. Mr. Wainwright is seated in the first row?

A. Yes.

Q. Do you recall the incident, which occurred at the First District Station on that date and time?

A. Yes.

Q. Did it involve the defendant?

A. Yes.

Q. Please tell the Court what occurred.

A. Mr. Wainwright was put behind the booking cage, and he was placed on the books with charges that the officers placed upon him. After the charges were placed, he was asked to remove a jacket he had on. The officers [fol. 35] wanted to see if he had a tattoo on his arm. He was picked up as a suspect that may have been wanted for murder.

Mr. Wainwright put his arms over his chest and backed up into a corner. Lt. Martello asked him to take the jacket off, and he just looked at us. He was asked again. He said, "If you want this jacket you will have to take it off."

We approached Mr. Wainwright, Officer Gilford and myself. Officer Gilford to the left, and I am on the right. We got hold of each of his arms. We tried to pry his arms apart, and in the meantime we were bounced from wall to wall and bench to bench and back again.

Court: Demonstrate.

Officer George O'Rourke: Well I tried to get one arm and Gilford the other. Mr. Wainwright when I tried to get his right arm, would rush me to the side, and when Gilford tried to get the left arm, he would push him to the side. We went back and forth.

Court: What is your weight Officer O'Rourke?

Officer George O'Rourke: At that time about one hundred and eighty pounds.

Court: What is your age?

[fol. 36] Officer George O'Rourke: Forty-four.

Court: The Court observed Mr. O'Rourke. He has a little stomach but mostly brawn or muscle.

Attorney J. B. Kiefer to Officer George O'Rourke:

Q. Who told you to remove this jacket?

A. Lt. Martello.

Q. Did you remove the jacket?
A. Yes.
Q. Were you injured in any way?
A. No. A little soreness, here and there.
Q. No further questions.

Attorney Dan A. Spencer to Officer George O'Rourke:

Q. Mr. O'Rourke, were you present when Mr. Wainwright was brought into the Station?
A. Yes.
Q. Where were you?
A. Behind the booking cage.
Q. Was Lt. Martello there then?
A. I cannot recall if he was in the area at the time. We sit back there to catch up on the Manual or any other items we have to read up on.
Q. What took place immediately upon Mr. Wainwright's being brought in? What did the officers do with him when they brought him in?
[fol. 37] A. I don't know.
Q. You were there?
A. In the booking cage.
Q. Did you see them bring him in?
A. No.
Q. When did you see him first?
A. When he was brought from the Interrogation Room to be brought to the Booking Room.
Q. He had been in the Interrogation Room?
A. I assume.
Q. Did you hear Mr. Wainwright ask to use the telephone?
A. Yes.
Q. When was this?
A. After he was booked and put up a struggle to get his jacket off.

Q. He didn't ask to use it before his jacket was removed?

A. No.

Q. When he was brought up to be booked, did he ask to use the telephone?

A. No, sir.

Q. After he was booked and before the jacket was removed, did he ask to use the telephone?

A. No, sir.

Q. Did he ever ask to see a lawyer?

A. No, sir.

[fol. 38] Q. How many officers did it take to get his jacket off?

A. Three of us. Two of us and when we got his right hand away from his chest, I asked for handcuffs. Officer Kent gave them to me.

Q. Other than that no one else assisted you?

A. Yes, Officer Gilford.

Q. Were other officers present besides Officer Gilford and yourself?

A. No, sir. Officer Gilford and myself and during the struggle Officer Kent came to our assistance.

Court to Officer George O'Rourke:

Q. The booking cage and the interrogation office are two separate rooms?

A. Yes.

Q. Could you be in the interrogation office talking to some one and some one in the booking cage not know you were in there?

A. Yes.

Q. Completely separate?

A. Yes.

Q. Closed door?

A. Yes.

Attorney Dan A. Spencer to Officer George O'Rourke:

Q. What did Officer Kent do?

[fol. 39] A. Helped Officer Gilford restrain Mr. Wainwright from further pushing us against the wall while the handcuffs were put on Mr. Wainwright.

Q. How was he pushing you around? Did he strike out at someone?

A. No. Like a football player going through a line.

Q. Did he try to run?

A. No, dancing from wall to wall.

Q. Did he do that because each of you were pulling on his arms?

A. He was trying to keep us from getting his arms.

Q. You pulled one way; Officer Gilford the other?

A. Yes, trying to get his arms apart.

Q. Immediately after you took his jacket off what happened?

A. His right arm was removed from the jacket and a handcuff put on. Left arm removed and he was handcuffed. He calmed down; then he was asked to use the 'phone. The handcuff was removed from his left arm and he was allowed to use the 'phone and rehandcuffed and brought to F.B.I. for processing.

Q. Were you standing next to him when he used the telephone?

[fol. 40] A. I was standing by him.

Q. He was handcuffed to you?

A. No, I was holding the handcuff.

Q. Did he finish using the telephone?

A. Yes.

Q. Officer O'Rourke did you hang the 'phone up or did Mr. Wainwright?

A. Mr. Wainwright.

Q. Did you curse Mr. Wainwright?

A. No.

Q. Did you strike Mr. Wainwright?

A. No.

Q. You didn't strike him between the legs with your knee, did you?

A. No.

Court: Why didn't you strike him?

Officer George O'Rourke:

A. We were trying to subdue the man, to keep from hurting him and getting ourselves hurt, as we had to get the jacket off.

Attorney Dan A. Spencer to Officer George O'Rourke:

Q. You didn't see Mr. Wainwright when he was first brought into the Police Station?

A. No.

Attorney J. B. Kiefer to Officer George O'Rourke:

Q. Your testimony has been that you didn't know how long Mr. Wainwright was in the station before he was brought before you, is that correct?

A. Yes.

[fol. 41] Q. Therefore, you wouldn't know whether or not he had made a request of someone else to use the telephone other than yourself, before he was brought to you, is that correct?

A. Yes. If he asked someone else I had no knowledge of it.

Q. To clarify your testimony, he made no request to use the telephone until after the incident, that is only insofar as in your presence, right?

A. Right.

Q. You don't know what requests, if any, were made by Mr. Wainwright before he was brought before you?

A. That is right.

Q. Do you know in what capacity Officer Kent serves?

A. Assigned to the Detective Bureau.

Q. Do you know for what purpose he was there?

A. No, sir, I had no idea.
Q. No other questions.

Attorney Dan A. Spencer to Officer George O'Rourke:

Q. Immediately after Mr. Wainwright was brought out of the Interrogation Room were you standing next to Lt. Martello?
[fol. 42] A. No, sir I was in the booking cage.
Q. Where was the Lieutenant?
A. I cannot say.
Q. Was he there?
A. I presume he was.
Q. You don't know he was?
A. No. Where at?
Q. How long after Mr. Wainwright was brought out of the Interrogation Room into the booking cage, did you notice Lt. Martello's presence?
A. When they proceeded to book Mr. Wainwright.

Attorney Dan A. Spencer: I move for a directed verdict.
Court: Denied.

Officer E. Boepple called by defense:

Officer E. Boepple, being duly sworn, testified:

Attorney Dan A. Spencer to Officer Boepple:

Q. Officer Boepple, do you know the defendant in this case, Stephen Wainwright?
A. Yes, I do.

Attorney J. B. Kiefer: I object.
Court: Under what circumstances do you know Stephen Wainwright, Officer Boepple?
Officer E. Boepple: I arrested the subject.

Attorney Dan A. Spencer to Officer E. Boepple:

Q. When did you arrest the subject?

[fol. 43] A. October 13, 1964.

Q. After the arrest did you take him to the First District Police Station?

A. I did.

Q. Did he ask you immediately upon being taken to the Police Station, to use the telephone to contact an attorney?

A. He asked me when he would be allowed to use the telephone.

Q. What did you tell him?

A. As soon as his name was on the book.

Q. What did you do with him as soon as you brought him to the Police Station?

A. Kept him in the Interrogation Room for a period of approximately seven to ten minutes.

Q. Was anyone else being booked at the time?

A. I think there were other prisoners there. I don't know for sure.

Q. Any reason he wasn't booked immediately?

A. I was awaiting arrival of two homicide officers, who I assume would be connected with the matter eventually. I wanted to await their arrival.

[fol. 44] Q. You suspected him of being a suspect in a murder case?

A. Correct.

Q. These two officers could have identified that murder suspect, is that correct?

Attorney J. B. Kiefer: I object.

Court: Sustained.

Attorney Dan A. Spencer to Officer E. Boepple:

Q. You didn't allow Mr. Wainwright to use the telephone until some ten or fifteen minutes after he was brought into the station?

Attorney J. B. Kiefer: I object.

Court: Sustained. This is a defense witness not a City witness.

Attorney Dan A. Spencer to Officer E. Boepple:

Q. How long did you keep Mr. Wainwright in interrogation before being brought out to be booked?

A. Seven to ten minutes.

Q. Why was he brought out to be booked at the time?

A. Orders of Lt. Martello.

Q. In what manner did he give these orders? What were his exact words?

A. He asked me if that man was under arrest. I said yes. He said for me to bring him out and book him.

Q. What happened then?

[fol. 45] A. I don't know. I went to roll-call room, someone had called me back there from the Armed Service Police.

Q. Did you ever see Mr. Wainwright again that morning?

A. I don't think so, Mr. Spencer. I don't recall.

Q. No further questions.

Attorney J. B. Kiefer to Officer E. Boepple:

Q. You are a member of the New Orleans Police Department?

A. I am.

Q. So employed on Friday, October 13, 1964?

A. I was.

Q. No other questions.

Officer John Ottesen, called by defense:

Officer John Ottesen, being first duly sworn, testified:

Attorney Dan A. Spencer to Officer John Ottesen:

Q. State your name please.

A. John Ottesen.

Q. What is your occupation?

A. Police patrolman assigned to the First District.

Q. Have you ever seen Mr. Wainwright before?

A. I have.

Q. When did you first see him?

A. Friday, October 13, 1964 about 12:30 AM.

[fol. 46] Q. Did you arrest him that night?

A. I did.

Q. Did you bring him to the First District Station?

A. Correct.

Q. What did you do when you brought him to the station?

A. When we brought him to the station we brought him into the Interrogation Room; questioned him as to his name, place of birth, etc.

Q. Did he answer these questions?

A. He answered his name; where he lived, and said he was a law student. He didn't want to tell us any other information.

Q. Did he ask to use the telephone?

A. I don't know.

Q. You don't recall whether or not he asked you?

A. I don't remember.

Court: He may have?

Officer John Ottesen: It's possible.

Attorney Dan A. Spencer to Officer John Ottesen:

Q. How long was he in the Interrogation Room?

A. Ten or fifteen minutes, and we telephoned for the Lieutenant.

Q. Where was he?

A. Out in the car.

Q. What did you call him for?

[fol. 47] A. We had a possible suspect in a murder case. We needed someone of higher knowledge to question the subject. We also notified the Detective Bureau.

Q. Why did you notify the Detective Bureau?

A. They had specifically asked us to check the vicinity of the French Quarter for a suspect wanted in a murder case.

Q. Why did you call them?

A. Suspect fitted the description of the wanted subject.

Q. Did you call them to send someone?

A. They had a better knowledge of the person than we had.

Q. What happened when Lt. Martello arrived?

A. The Lieutenant asked him a few questions; he said his name; where he lived; and that he was a law student.

Court: The Court at this time is offering an instanter subpoena to Mr. Spencer if he wishes to have these two individuals with the Detective Bureau available so that they can answer if they knew one Johnnie McTaylor.

Attorney Dan A. Spencer to Officer John Ottesen:

[fol. 48] Q. What happened then after you called the Detective Bureau, and Lt. Martello arrived, what did you do, did you leave the prisoner, or did you stay there while he was booked?

Court: Subsequent to the calls to Lt. Martello and the Detectives' office, what did you do, Officer Ottesen?

Officer John Ottesen: Lt. Martello arrived and he questioned Wainwright, and wanted Mr. Wainwright to remove his jacket, because this was a vital incident in his identification, as to whether he was Johnnie McTaylor or not.

Attorney Dan A. Spencer to Officer John Ottesen:

Q. Did you ever search Mr. Wainwright?

A. Yes, when we first interrogated the suspect.

Q. Did he have any weapons on him?

A. No.

Q. Were you certain he had no weapons on him?

A. We gave him a quick frisk—a pat down.

Court: Were you reasonably certain he didn't have any weapons on him based upon your frisk?

Officer John Ottesen: I was satisfied that he didn't have a weapon.

Attorney Dan A. Spencer to Officer John Ottesen:

[fol. 49] Q. Were you present in the First District Station when he was booked?

A. Yes.

Q. Had his jacket been taken off of him when he was booked?

A. He was asked to remove his jacket by Lt. Martello.

Court: Prior to the booking, was his jacket on or not?

Officer John Ottesen: He had his jacket on.

Attorney Dan A. Spencer to Officer John Ottesen:

Q. Did he have his jacket on at the time he was booked?

A. I don't remember.

Q. Do you remember his ever having asked to make a telephone call after he was booked?

Defendant Stephen Wainwright to the Court: This officer here (indicating Officer O'Rourke) has been nodding his head.

Attorney J. B. Kiefer: If this officer is coaching this witness . . .

Attorney Dan A. Spencer: The Court's instructions have been violated.

Attorney Dan A. Spencer to Officer John Ottesen:

Q. Was Officer O'Rourke making signals to you?

A. Not to my knowledge.

Q. Did you see him?

[fol. 50] A. You were standing right where he was seated.

Court: Have any of your statements been influenced by any one in this Court Room?

Officer John Ottesen: No, sir.

Attorney Dan A. Spencer to Officer John Ottesen:

Q. Do you recall Mr. Wainwright either before, or after being booked, asking to use the telephone?

A. He might have. We explained he had to be booked and then use the 'phone.

Q. Why did he have to be booked before using the telephone?

A. Procedure.

Q. Is there a sign over there in the District Station?

A. Yes.

Q. Do you remember what it says?

A. I know they are allowed to use the telephone. Every instance I ever handled they were booked and then allowed to use the 'phone.

Q. In this case defendant was interrogated before he was booked? He wasn't booked immediately after being brought into the Station, is that not true?

Attorney J. B. Kiefer: I object.

[fol. 51] Court: Answer the question.

Officer John Ottesen: He was interrogated.

Attorney Dan A. Spencer to Officer John Ottesen:

Q. Before being booked?

A. Correct.

Q. Before being allowed to make a telephone call?

A. We asked him the same questions that we asked him out on the street.

Q. You were interrogating him about a possible murder case?

A. No. We wanted to establish his place of birth.

Q. You didn't ask him if he was Johnnie McTaylor?

A. I don't believe we ever asked him out right. I didn't ask him.

Q. You did interrogate him about possible murder suspect?

A. Correct.

Q. Before you booked him?

A. Yes we did.

Q. No further questions.

Attorney J. B. Kiefer: No questions.

Stephen R. Wainwright, defendant, being duly sworn, testified:

Attorney Dan A. Spencer to Stephen R. Wainwright:

Q. State your name.

A. Stephen R. Wainwright.

Q. What is your occupation?

[fol. 52] A. Graduate law student working for a lawyer in Massachusetts.

Q. For whom do you work?

A. George L. Wainwright.

Q. Is he related to you?

A. He is my father.

Q. On October 13th, 1964, what was your occupation?

A. Student of Law at Tulane University here in New Orleans.

Q. Have you since graduated from Tulane?

A. Yes, I have.

Q. You now have a Law Degree?

A. I have.

Q. Do you have any other College Degrees?

A. A Bachelor of Arts in Psychology from Wesleyan University.

Q. Do you have any previous convictions?

A. None.

Decision of the Court:

I find the defendant guilty and sentence him to pay a fine of $25.00 or serve thirty days in jail on each charge, and I am suspending same.

Attorney Dan A. Spencer: I wish to file a Motion for an Appeal.

Court: Granted.

Certificate

I hereby certify the foregoing to be a true and correct copy of the transcript of testimony and notes of evidence [fol. 53] in the above numbered and entitled cause.

New Orleans, Louisiana, July 30, 1965.

Andrew G. Bucaro, Judge.

Gerry Heaton, Stenographer.

First District J-7405-65 **AFFIDAVIT** H. Perez
DESK SERGEANT

State of Louisiana, City of New Orleans, Parish of Orleans

Second MUNICIPAL COURT, SECTION

THE CITY OF NEW ORLEANS, LA.
versus

Stephen R. Wainwright W. M. 25
829 Ursuline St.

Personally appeared before me, the undersigned

ANDREW G. BUCARO

Judge of the Second Municipal Court of the City of New Orleans, duly commissioned and sworn.

Lt. F. Martello
Patn. E. Boepple
Patn. J. Ottesen
Det. D. Kent
Det. R. Townsend
Patn. G. O'Rourke
Patn. F. Gilford

who having been duly sworn, doth depose and say:

That on Friday the 13th. day of October 19 64 A.C.B. 7/16/65, at about 1:25 o'clock A. M., on Basin & St. Louis Street, between and Streets, within the jurisdiction of this Court, one

Stephen R. Wainwright

did then and there wilfully violate Ordinance No. 828 MCS Section 49-2 relative to

Resisting an Officer

All against the peace and dignity of the City of New Orleans.

Wherefore the deponent charges the accused with violating Ordinance No. 828 MCS Section No. 49-2 and prays that he be arrested and dealt with according to law.

Sworn to and subscribed before me, this 14 day of May 19 65

(Signed) Lieut Francis L. Martello

(Signed) Andrew G. Bucaro
Judge.

Color	Age	Male	Female	Where Employed	Address of Employer

Time Paroled _____ By Whom Paroled _____ For _____

NOTICE TO PRISONER:—You must appear in Second Municipal Court, 501 North Rampart St., 1 P M., 5/13/65 19____, without fail under penalty of fine and imprisonment.

FORM H. Q. No. 1

[fol. 54]

BOND SIGNED BY

Name

Address

AFFIDAVIT RECEIVED _____ 19__

No. 83469-A

THE CITY OF NEW ORLEANS

VERSUS

Stephen R. Wainwright

VIOLATING ORDINANCE:

49-2

PROSECUTOR:

$ 50.00 APPEARANCE BOND

5/14/65

Arraigned _____ day of _____ 19__

And Pleaded 3 N.G.

DECISION

May 21,1965 9 AM

Guilty

$25.00 or 30 days suspended

(Signed) Andrew S. Bucaro

JUDGE.

CITY WITNESSES:

NAME ADDRESS

DEFENSE WITNESSES:

NAME ADDRESS

Received In Court By _____ Date _____ Time _____

First District J-7405-65

AFFIDAVIT

H. Perez
DESK SERGEANT

State of Louisiana, City of New Orleans, Parish of Orleans

Second MUNICIPAL COURT, SECTION

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Personally appeared before me, the undersigned

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Patn. E. Boepple
Patn. J. Ottesen
Det. D. Kent
Det. R. Townsend
Patn. G. O'Rourke
Patn. F. Gilford

who having been duly sworn, doth depose and say:

That on Friday the 13th. day of October 19 64, at about 1:25 o'clock A. M., on Basin & St. Louis (First District Station) Street, between

and Streets, within the jurisdiction of this Court, one

Stephen R. Wainwright

did then and there wilfully violate Ordinance No. 828 MCS Section 42-24 relative to

Disturbing the peace by assult on Patn. George O'Rourke

All against the peace and dignity of the City of New Orleans.

Wherefore the deponent charges the accused with violating Ordinance No. 828 MCS Section No. 42-24 and prays that he be arrested and dealt with according to law.

Sworn to and subscribed before me, this 14 day of May 19 65

(Signed) Lieut. Francis L. Martello

(Signed) Andrew G. Bucaro
Judge.

Color	Age	Male	Female	Where Employed	Address of Employer

Time Paroled _____ By Whom Paroled _____ For _____

NOTICE TO PRISONER:—Your must appear in _____ Municipal Court, 501 North Rampart St., 1 P M., 5/24/65 19____, without fail under penalty of fine and imprisonment.

FORM H. Q. No. 1

[fol. 56]

43

BOND SIGNED BY

Name

Address

AFFIDAVIT RECEIVED _____ 19___

No. 83469-A et al

THE CITY OF NEW ORLEANS

VERSUS

Stephen R. Wainwright

829 Ursuline

VIOLATING ORDINANCE:

828 42-24

PROSECUTOR:

APPEARANCE BOND

$ 50.00

Arraigned _____ day of 5/24/65 19___

And Pleaded _____

DECISION

May 21,1965 9 AM

Guilty

$25.00 or 30 days suspended

Andrew G. Bucaro

JUDGE.

CITY WITNESSES:

NAME | ADDRESS

DEFENSE WITNESSES:

NAME | ADDRESS

Received In Court By _____ Date _____ Time _____

First District J-7405-65

AFFIDAVIT

H. Peres
DESK SERGEANT

State of Louisiana, City of New Orleans, Parish of Orleans

Second MUNICIPAL COURT, SECTION

THE CITY OF NEW ORLEANS, LA.
versus

Stephen R. Wainwright W. M.25
829 Ursuline St.

Personally appeared before me, the undersigned

Andrew G. Bucaro

Judge of the Second Municipal Court of the City of New Orleans, duly commissioned and sworn.

Lt. F. Martello
Patn. E. Bosipple
Patn. J. Ottesen
Det. D. Kent
Det. R. Townsend
Patn. G. O'Rourke
Patn. F. Gilford

who having been duly sworn, doth depose and say:

That on Friday the 13th. day of October 1964 at about 1:25 o'clock A. M., on Basin & St. Louis Street, between (First District Station) and Streets, within the jurisdiction of this Court, one

Stephen R. Wainwright

did then and there wilfully violate Ordinance No. 828 MCS Section 42-24 relative to

Disturbing the peace by assult on Patn. Frank Gilford

All against the peace and dignity of the City of New Orleans.

Wherefore the deponent charges the accused with violating Ordinance No. 828 MCS Section No. 42-24 and prays that he be arrested and dealt with according to law.

Sworn to and subscribed before me, this 14 day of May 19 65

(Signed) Lieut Francis L. Martello

(Signed) Andrew G. Bucaro
Judge.

Color	Age	Male	Female	Where Employed	Address of Employer

Time Paroled _____ By Whom Paroled _____ For _____

NOTICE TO PRISONER:—Your must appear in Second Municipal Court, 501 North Rampart St., 1 P M., 5/13/65 19 ___, without fail under penalty of fine and imprisonment.

[fol. 58]

45

14JRM H. Q. No. 4

No. 83469-A et al.

THE CITY OF NEW ORLEANS

VERSUS

Stephen R. Wainwright

829 Ursuline

VIOLATING ORDINANCE:

828 42-24 et al.

PROSECUTOR:

APPEARANCE BOND

$ 50.00

Arraigned day of 5/14/65 19

And Pleaded 1. N.G.

DECISION

May 21,1965 9AM

Re-set 7/16/65 - Ntify Bondsman

July 16,1965 9 AM Reset

See Steno's notes

Guilty -$25.00 or 30 days suspended

Andrew G. Bucaro

JUDGE.

BOND SIGNED BY

Name

Address

AFFIDAVIT RECEIVED 19

CITY WITNESSES:

NAME ADDRESS

DEFENSE WITNESSES:

NAME ADDRESS

Received In Court By Date Time

APPEAL BAIL BOND

State of Louisiana, City of New Orleans, Parish of Orleans

FIRST MUNICIPAL COURT

KNOW ALL MEN BY THESE PRESENTS, That we Stephen R. Wainwright as surety, bind ourselves in solido, unto the City of New Orleans, in the following sums, to-wit:

No Bond

The said Stephen R. Wainwright the sum of No. Bond Dollars,

The said _____ the sum of _____ Dollars,

The said _____ the sum of _____ Dollars,

The said _____ the sum of _____ Dollars,

of good and lawful money of the United States, for the true payment of which respective sums they and each of them, bind themselves, their respective heirs, executors and administrators firmly by these presents.

WHEREAS, the above bounden Stephen R. Wainwright has this day appealed from the judgment and sentence rendered by the Judge of the ~~Second~~ FIRST Municipal Court of the City of New Orleans,

against Stephen R. Wainwright condemning the said Stephen R. Wainwright, to pay a fine of $75.00 Dollars, or suffer imprisonment for a period of 90 Suspended Sentence Days in default of payment of said fine, in the cause City of New Orleans, vs. Stephen R. Wainwright No. 83469-A of the ~~Second~~ FIRST Municipal Court of the City of New Orleans.

[fol. 60]

NOW, therefore, the condition of the above obligation is such, that if the said Stephen R. Wainwright shall prosecute the said appeal with effect, and shall pay and perform any judgment that may be rendered thereon against Stephen R. Wainwright, then and in such case, the above obligation to be null and void, otherwise shall remain in full force and virtue.

_____	_____
_____	_____
_____	_____
_____	_____

TAKEN and acknowledged at the City of New Orleans, this 16 day of July 1935 before me Andrew H. Bucaro

Judge of the ~~Second~~ FIRST Municipal Court of the City of New Orleans

No. 83469-A

APPEAL BAIL

BOND

FIRST [redacted] MUNICIPAL COURT

City of New Orleans

vs.

Stephen R. Wainwright

829 Vaudine St.

AUG 11 REC'D

AFFIDAVIT OF SURETY
SECOND MUNICIPAL COURT

State of Louisiana,
City of New Orleans
Parish of Orleans.

_____ being duly sworn, deposes and says that he resides in the City of New Orleans, and that after paying all his just debts and liabilities, he is well and truly worth the sum of _____ Dollars, in property, all situated within the jurisdiction of this Honorable Court, viz: _____

and that he has not signed or executed any deed, note, bond, contract, assignment or instrument of any kind that will vitiate or prevent the enforcement of this bond.

Sworn to and subscribed before me, the 16 day of July 1965

Andrew D. Bruno

Judge of the [redacted] Municipal Court
of the City of New Orleans

[fol. 61]

[fol. 62] Section 49-2. Resistance Unlawful.

It shall be unlawful for any person, by word or action, to resist an officer, or to incite, induce, suggest or otherwise persuade or attempt to persuade any person to resist an officer. (C.C.S., Ord. No. 18,142, §2.)

Clerk's Office

Council of the City of New Orleans

City Hall, July 28, 1965

I hereby certify that the above is a true and correct copy of Section 49-2 of the Code of the City of New Orleans, as adopted by Ordinance No. 828 Mayor Council Series.

Roger L. Sarrat, Clerk of Council.

[fol. 63] Section 42-24. Disturbing Public Peace.

No person shall disturb the public peace by assaulting or beating another or by threatening to do bodily harm to another. (C.C.S., Ord. No. 7637, §1; C.C.S., Ord. No. 7809, §1.)

Clerk's Office

Council of the City of New Orleans

City Hall, July 28, 1965

I hereby certify that the above is a true and correct copy of Section 42-24 of the Code of the City of New Orleans, as adopted by Ordinance No. 828 Mayor Council Series.

Roger L. Sarrat, Clerk of Council.

[fol. 64]

IN THE CRIMINAL DISTRICT COURT

FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

83469—A, et al

CITY OF NEW ORLEANS, STATE OF LOUISIANA,

v. Number 192-168-"D"

STEPHEN R. WAINWRIGHT.

APPLICATION FOR WRITS OF CERTIORARI, PROHIBITION AND MANDAMUS TO THE FIRST MUNICIPAL COURT, CITY OF NEW ORLEANS, STATE OF LOUISIANA

Dan A. Spencer, 3420 Greenwood Road, Shreveport, Louisiana, Attorney for Stephen R. Wainwright.

[fol. 65] To the Honorable the Judges of the Criminal District Court of the Parish of Orleans, State of Louisiana:

The petition of Stephen R. Wainwright, defendant in the case entitled "City of New Orleans v. Stephen R. Wainwright, No. 83469—A, et al," on the Docket of the First Municipal Court of the City of New Orleans, respectfully shows:

Statement of the Case

The defendant was convicted in the First Municipal Court of the City of New Orleans, on July 16, 1965, of violating certain municipal ordinances of the City of New Orleans.

On that same date, the defendant, through counsel, made both oral and written motions for appeal. The motion was granted by the Court, Honorable Andrew G. Bucaro presiding, and the Court set a return date of August 16, 1965. Contra: La.R.S. 13:2498.

By letter dated August 9, 1965, counsel for the defendant was advised by Mr. Arthur J. Boe, Clerk of the Municipal Court of New Orleans, that the defendant's appeal in this matter was ready to be filed in the Criminal District Court upon payment by the defendant of Forty-Three Dollars ($43.00) due the City of New Orleans. On August 11, 1965 counsel for defendant sent a check for Forty-Three Dollars ($43.00) to Mr. Arthur J. Boe, Clerk of the Municipal Court, and requested that he file the record in this case in the Criminal District Court.

Counsel for defendant has filed a brief on his appeal in the Criminal District Court on the basis of a copy of the transcript of the case which he had ordered from the court stenographer. It was only learned on October 18, 1965 that the record in this case had never been sent up to the Court. On that date, counsel for defendant contacted Mr. Arthur J. Boe, Clerk of the Municipal Court and upon inquiring as to why the record had not been sent up, was advised that Judge Bucaro had the record in this case and that Mr. Boe do nothing about the matter.

[fol. 66]

Ground on Which the Supervisory Jurisdiction of This Court Is Invoked

Petitioner shows that no appeal lies from the judgments and actions complained of and further shows that he will suffer irrevocable injury as a result of these judgments and actions unless remedial writs are granted by this Honorable Court for the following reasons:

Assignment of Error

The Municipal Court of New Orleans has no authority to hold the record in this case and should have sent it immediately to this Court after it was prepared.

Argument on Assignment of Error

Louisiana Revised Statute 13:2498—B provides:

"§ 2498 B. The court reporters of the court shall, in all cases, take down the testimony verbatim. The stenographic notes need not be written out unless an appeal is taken, in which case the testimony shall be written out and signed by the judge. *In cases of appeal the clerk shall prepare the record for the appellate court.* This will consist of the affidavit bond, testimony and every document, instrument, property or thing whatsoever in possession of the court, filed in the trial of the case, together with the ordinance or ordinances on which the prosecution is based. The clerk shall make, in duplicate, a list of each specific thing, whose correctness shall be certified to by the judges to one of the lists. *This record, and all it contains, and the signed list shall then be filed with the clerk of the criminal district court who will receipt for same after signing the other list. When the appeal is taken it divest the municipal court of New Orleans from all further jurisdiction in the case.*"

Louisiana Revised Statute 13:2498—D provides:

"§ 2498 D. In no case shall the appellant be responsible for any error, omission or oversight in the record of the appeal."

Wherefore, petitioner prays that his application for remedial writs be filed in this Honorable Court and that writs of Certiorari, Prohibition and Mandamus issue herein ordering and commanding the Judge of the First Munic-[fol. 67] ipal Court of the City of New Orleans to send forthwith the original records of the above case to this court for reviewing of the judgments and actions of the said Judge of the First Municipal Court and prohibit the said Judge from proceeding further in this case and the

respondent from prosecuting it further until the judgment be pronounced herein on the regularity of these proceedings. That the aforesaid Judge of the First Municipal Court and the respondent, the City Attorney, be ordered to immediately send up to this Court the entire record in this case.

Dan A. Spencer, Attorney for Defendant, 3420 Greenwood Road, Shreveport, Louisiana.

State of Louisiana,
Parish of Caddo:

Dan A. Spencer, being duly sworn, deposed and said that he is attorney for the petitioner in the above and foregoing application for remedial Writs of Certiorari, Prohibition and Mandamus; that all of the facts set forth therein are true and correct; that a copy of the application has been mailed to the City Attorney, postage prepaid and a copy has been mailed to the respondent Judge of the First Municipal Court, Honorable Andrew G. Bucaro, postage prepaid.

Dan A. Spencer.

Sworn to and subscribed before me, this 19th day of October, 1965.

Bert J. Leahy, Notary Public, Caddo Parish, La. My Commission Is for Life.

[fol. 68]

IN THE CRIMINAL DISTRICT COURT
FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA
No. 192-168—Section "D"

CITY OF NEW ORLEANS,
versus
STEPHEN R. WAINWRIGHT.

Appeal From First Municipal Court
City of New Orleans

JUDGMENT—March 2, 1966

This is an appeal by the appellant, Stephen R. Wainwright, from the judgment of the First Municipal Court of the City of New Orleans.

The defendant, Stephen R. Wainwright, was convicted in First Municipal Court of violation of Ordinance No. 828 M.C.S. Section 49-2 relative to resisting an officer and violation of Ordinance No. 828 M.C.S. Section 42-24 relative to disturbing the peace. He was found guilty and given a $25.00 fine on each charge which sentences were suspended and the defendant timely filed his appeal.

Counsel for defendant has urged several grounds for reversal of the convictions, which shall be considered, but at the outset this Court is of the opinion that the defendant was under arrest at the time the incidents, which form the basis of these charges, occurred.

The defendant was stopped and questioned by the arresting officers because, in their opinion, he fitted the description of a subject wanted for the crime of murder. The

officers had been furnished a composite drawing of the wanted subject and had been requested to search the vicin-
[fol. 69] ity of the French Quarter. When the defendant was stopped in the French Quarter he was informed that he fitted the description of the wanted subject and that the wanted subject had a tattoo on his left forearm "born to raise hell". The defendant had no identification on him when he was stopped and he refused to remove his jacket for the purpose of identification. The defendant was belligerent and attempted to walk off on three different occasions and appeared to be using subterfuge to evade the matter. He refused to answer any questions except his name and that he was a law student. He would not tell his place of birth or give any other information. The officers then arrested him, placed him in a police car and took the defendant to the First District Station.

Under the circumstances, the arrest was legal. Louisiana Revised Statutes 15:60 provides that any peace officer without a warrant may arrest a person:

(3) When a felony has been committed and he has reasonable cause to believe that such person committed it.

"Almost without exception when the fact of felony is known to the police before arrest the courts have found the second prong i.e., the identity of the felon also to have been established. Stated factually, the cases hold that if the police learn from the victim, from their fellow officers, from their own observation at the scene of the crime or from reliable informants that a felony has in fact been committed, the courts require little more toward identifying the felon to warrant arrest and search. Bare description, presence near the scene of the felony, suspicious or furtive conduct, any evidence of this nature has been held to constitute probable cause to establish the identity of the felon." (People vs. Estrialgo 37 Misc. (2) 264, 233 N.Y.S. 2nd 558.)

Considering all of the facts and circumstances the police were justified and had reasonable cause to arrest the defendant. The Court feels that this entire episode could have been avoided if the defendant had merely revealed [fol. 70] his arm, disclosing no tattoo marks and had attempted to be more cooperative.

When the defendant was brought to the First District Station the facts concerning the arrest were brought to the attention of Lieutenant Martello, the superior of the arresting officers.

Lieutenant Martello attempted to question the defendant and he refused any information. Lieutenant Martello asked him to remove his jacket prior to being booked for identification purposes and to reveal any possible concealed weapon. The defendant at this time advised the officer if he wanted the jacket off, he would have to take it off. Lieutenant Martello instructed Officer O'Rourke and Officer Gilford to remove the defendant's jacket. The defendant then folded his arms and crouched and buffeted the officers in their efforts to remove the jacket. The conduct of the defendant was so violent that it was necessary to summon the assistance of a third officer, namely, Officer Kent before his jacket could be removed.

The conduct of defendant at this time was not resisting an officer within the definition and since criminal statutes must be strictly construed, the Court finds the defendant not guilty of resisting an officer. I have been unable to find any authorities as when the resisting arrest must occur. Arrest necessarily involves more than the original physical detention and it could be argued logically that arrest covers the transporting to the station, and booking and fingerprinting but since criminal statutes must be strictly construed in favor of the defendant, I hold that the conduct of the defendant was not, technically, resisting [fol. 71] within the wording of the ordinances for the reason that the definition of Resisting an Officer must be read together with the offense of resisting an officer, and one limits the other.

The Chief of Police and the officers, under his direction, have the responsibility of, first, maintaining the security of the District Stations and, secondly, to furnish information relative to arrested and suspected persons' name, fingerprints, photographs and identification to the Department of State Police. R.S. 15:581 et sequitur. The defendant was in police custody pursuant to a legal arrest and the officers had the right and the obligation to search the defendant for any concealed weapons, even though the defendant had been previously "frisked" for weapons on the street. This second search before locking up is more detailed because it has to cover not only obvious weapons but anything that may be used as a weapon or means of escape or injury to anyone. It is a matter of common knowledge that belts and ties are always taken from defendants before lockup to protect them as much as anyone else.

For the purpose of identification the police had a right to examine defendant's arm. If perchance the defendant had been the wanted subject and this forceful examination had disclosed his identity, evidence of such an identifying mark could have been testified to. Further, in many jurisdictions the defendant could have been compelled to exhibit his arm at the trial of the matter.

> "Generally, it is not considered to be a violation of the privileges against self incrimination to compel one who is accused or suspected of a crime to perform an act outside the court and not in the presence of the jury and to allow a witness to testify as to the act. This has been explained as arising from the fact that the [fol. 72] privilege is intended to protect the defendant as a witness and when such an act is performed outside of court, the evidence thereof comes from witnesses other than the defendant and therefore does not violate his privilege. Furthermore, it has been said that this is as much to exonerate the accused as it is to identify him as the perpetrator of the crime.

> Thus, a suspect has been required to try on garments such as a hat or a coat, to put a handkerchief over part of his face, to appear in a police lineup, to submit to a physical examination of his body, to submit to having his fingerprints or footprints taken, to assume certain poses, to be photographed, to speak for voice identification, and to surrender his shoes for the purpose of permitting them to be compared with tracks near the place where the crime was committed." 21 Am. Jur. 2nd P. 368.

> "Even in a courtroom during a trial a defendant may be required to stand and remove a visor so that witnesses attempting to identify him (or presumptively exonerate him) may have an unobstructed view of his features." People vs. Clark, 18 Cal. 2nd 449—116 P. 2nd 56.

In People vs. Lopez 384 P. 2nd 16 the defendant was convicted of murder and objected to being forced to appear in a lineup and appealed. The Court, in denying the appeal, stated:

> "Showups are a part of the investigation procedure and often result in the release of a suspect. The showup exposes subjects to view for purposes of identification or elimination but not incrimination." See also State vs. Hughes 154 So. 2nd 395—244 La. 744.

In the instant case the examination of the defendant by the police exonerated him of the charge or suspicion of murder. There is no evidence the police used unnecessary force in removing the defendant's jacket but, on the contrary, the testimony of the officer was to the effect that they tried to avoid being hurt by the defendant or hurting him, but that he bounced them from wall to wall. To hold that the police in circumstances such as this cannot make a reasonable search and examination of an individual in lawful police custody and that an individual can violently

oppose the action of police in doing their duty, would be to unduly hamper the police.

> [fol. 73] "The steady increase in the number of serious crimes throughout the United States is a matter of grave concern. Of course the constitutional rights of the individual should be protected. But in our zeal to safeguard those rights we must not be unmindful of the public interest involved and we should not erect any unnecessary barriers that will thwart the law enforcement officers in the performance of their duties to investigate, detect and secure evidence of crime." Hollingsworth vs. U. S. 321 F. 2nd. 342.

In State vs. Hughes 154 So. 2nd 395, 244 La. 774, objection was made to the introduction of photographs of the accused and the testimony of the coroner as to his examination of the accused, which were overruled. In affirming the trial court, the Supreme Court stated:

> "We do not think that permitting the coroner to testify as to his findings upon the physical examination made of the accused or the admission in evidence of pictures of the accused denied him due process of law simply because the examination was made and the pictures were taken while he was in custody of the police and without counsel. We know of no provision of the law which requires the consent of the person arrested and charged with a crime for these things to be done. Neither the testimony of the coroner nor the admission in evidence of the pictures violated defendant's constitutional privileges against compulsory self-incrimination. Underhill's Criminal Evidence (5th ed. 1956) P. 239, sec. 126. State vs. Roy 220 La. 1017, 58 So. 2d. 323. State vs. Robinson 221 La. 19, 58 So. 2nd 408. Counsel does not say that the admission of the testimony and of the pictures was contrary to any rule of evidence or violated any statute or law of this

state, and we do not think the facts and circumstances show that any constitutional right of the accused was violated."

Can it be successfully urged that a suspect or defendant cannot be physically forced to appear in a lineup; physically forced to submit to fingerprint and photograph; physically forced to submit to physical examination when the force used is not excessive and only such force is used as is necessary to overcome the resistance of the defendant. I think not. To hold otherwise would thwart the police in their normal investigative procedure.

[fol. 74] The judgment of the trial court and the sentence as to the verdict of guilty on the two charges of Disturbing the Peace, is affirmed.

New Orleans, Louisiana, March 2nd, 1966.

Thos. M. Brahney, Jr., Judge, Section "D", Criminal District Court, Parish of Orleans, State of Louisiana.

[fol. 75]

IN THE SUPREME COURT OF LOUISIANA

CITY OF NEW ORLEANS, STATE OF LOUISIANA,

VS. #48108

STEPHEN R. WAINWRIGHT.

#192-168 Section D

CRIMINAL DISTRICT COURT

PARISH OF ORLEANS

STATE OF LOUISIANA

APPLICATION FOR WRITS OF CERTIORARI, PROHIBITION AND MANDAMUS TO CRIMINAL DISTRICT COURT OF THE PARISH OF ORLEANS, STATE OF LOUISIANA

Stephen R. Wainwright, Pro Se, 106 Main Street, Brockton, Massachusetts.

[fol. 76] To the Honorable the Justices of the Supreme Court of Louisiana:

The petition of Stephen R. Wainwright, defendant in the case entitled "State of New Orleans vs. Stephen R. Wainwright, #192-168, Section D, Criminal District Court, Parish of Orleans, State of Louisiana."

Respectfully Shows:

Statement of the Case

On October 13, 1964, just before one A.M., the defendant, Stephen R. Wainwright, was walking on the street near his home on Ursuline Street, New Orleans, when he was stopped by two police officers and ordered to remove his

clothes. The defendant did not have his draft card with him, but he gave his name and address. He refused to take off his clothes. He was, therefore, arrested for vagrancy by loitering, reviling the police and resisting arrest.

The defendant asked the police if he would be allowed to call his lawyer who would identify him, but this request was denied.

The defendant was taken to the police station where he was assaulted, brutally beaten and his clothing removed. The police then discovered that the defendant was not the man that they were looking for. They were looking for a [Vol. 77] man that was tattooed.

Following the beating of the defendant, the defendant was permitted to call his lawyer, but then was immediately taken to another police station so that his lawyer could not get in touch with him.

Several hours later, the defendant was released by the police and immediately went to a hospital for emergency treatment for his injuries.

At 10 P.M. that night, the defendant was arraigned and trial was set for December 4th, 1964. The trial of these complaints started on December 4th, 1964 before Judge Bucaro. The docket number of this case started as "Municipal Court, Docket No. 80503B".

After hearing part of the evidence of December 4th, 1964, Judge Bucaro, over the objection of the defendant, continued the case indefinitely.

No further hearings were held on this case until May 7th, 1965, at which time again Judge Bucaro heard only a part of the evidence, and then over the objection of the defendant continued the case to May 14th, 1965. On that date, at the termination of the government's case, the defendant moved for a directed verdict. Judge Bucaro took this Motion under advisement.

The judge then conferred with the prosecuting attorney and as a result of this conversation, new complaints were brought, to wit, resisting arrest and disturbing the peace.

[fol. 78] These offences were alleged to have occurred on October 13, 1964, seven months before.

A new case number was assigned to this new element in the case, given number 83469A.

The defendant insisted on immediate trial of these new complaints and insisted that the Judge make a decision on his Motion for Directed Verdict with respect to the original charges. Judge Bucaro refused to decide the Motion for Directed Verdict and refused to hear the complaints on May 14th and continued them to May 21st.

However, on May 17th, the defendant was advised that the cases would not be heard on the 21st, but instead were continued, over the objection of the defendant, to the 16th day of July, 1965. This necessitated the defendant travelling 3,000 miles in order to be present on the 16th of July, 1965.

On July 16th, 1965, Judge Bucaro still refused to take any action on the Motion for Directed Verdict with respect to the first half of the case, to wit, the original complaints of October 13, 1964, and he found the defendant guilty of the second half of the case, to wit, the new complaints which had been brought on May 14th, 1965.

These convictions were duly appealed to the Criminal District Court for the Parish of Orleans.

A stenographic transcript was made of the hearings on December 4th, 1964, May 7th, 1965, May 14th, 1965 and July [fol. 79] 16, 1965. However, the transcript of the evidence taken on December 4, 1964, May 7, 1965 and May 14, 1965 was never made a part of the record to be heard on the appeal, although request for the same was duly made by the attorney for the defendant.

On March 2nd, 1966, judgment was rendered by the judge of the Criminal District Court reversing the defendant's convictions on violation of Ordinance No. 828MCS, Section 49-2 relative to resisting an officer. The conviction was affirmed on the complaints alleging "disturbing the peace".

The crime for which the defendant now stands convicted, is Section 42-24 of the Code of the City of New Orleans,

which provides as follows:—Disturbing Public Peace:—"No person shall disturb the public peace by assaulting or beating another or by threatening to do bodily harm to another". (C.C.S., 7809, Section 1.)

In the record tendered by the City of New Orleans to Judge Brahney, Jr., of the Criminal District Court, the vital parts of the transcript were not included so that Judge Brahney had no opportunity to make a sound decision on the record.

The foregoing statements of fact, insofar as they do not appear in the judgment of the Criminal District Court, are a part of the record in the first half of the case in the Municipal Court of the City of New Orleans, Case No. 80503B.

It will be impossible for this Court to make a full determination of the extent to which the rights of the defendant have been violated, without the court having the complete [fol. 80] record of the Municipal Court Case No. 80503B, and the defendant at this time respectfully requests that the record in case No. 80503B of the New Orleans Municipal Court be, by order of this Court, made a part of the record in this case for the purpose of determining this appeal.

Grounds for Supervisory Jurisdiction

The supervisory jurisdiction of this Court under Louisiana Constitution, Article 7, Section 10, is invoked.

[fol. 81] Assignment of Error

The defendant assigns as error on the part of the Criminal District Court of the Parish of Orleans, the following, viz:—

(1) There was insufficient evidence as a matter of law to find that the defendant committed an assault on anyone.

(2) There was insufficient evidence as a matter of law to justify a finding that the defendant committed a breach of the public peace.

(3) The defendant was denied his constitutional right to due process in that:

(a) The defendant was denied his right to have counsel present from the moment of his arrest.

(b) The defendant was deprived of his right not to be subject to unlawful search.

(c) The defendant was deprived of his right to a speedy trial.

(d) The defendant was deprived of his right to an impartial trial.

[fol. 82] Argument on Assignment of Errors

(1) There Was Insufficient Evidence as a Matter of Law to Find That the Defendant Committed an Assault on Anyone.

(2) There Was Insufficient Evidence as a Matter of Law to Justify a Finding That the Defendant Committed a Breach of the Peace.

The standard definition in Black's Law Dictionary for Assault is as follows:—

> Assault. An intentional, unlawful offer of corporal injury to another by force, or force unlawfully directed toward person of another, under such circumstances as create well-founded fear of imminent peril, coupled with apparent present ability to execute attempt, if not prevented. State v. Staw, 97 N.J.L. 349, 116A. 425; Naler v. State, 148 So. 880, 25 Ala.App. 486.

In affirming the conviction for assault, the Criminal District Court found the following fact, "The defendant then folded his arms and crouched and buffeted the officers in their efforts to remove the jacket."

It is evident from this finding that the defendant's only concern was to keep his clothes on. There was no unlawful offer of "corporal injury" by the defendant; no intent on the defendant's part to injure or harm anyone; and no one was put in fear of imminent peril by the defendant. The evidence merely shows that the defendant acted in self defense and resisted the removal of his clothing. This does [fol. 83] not constitute assault as a matter of law and under Section 42-24 of the Code of the City of New Orleans cannot be construed as a breach of the peace.

(3) The Defendant Was Denied His Constitutional Rights to Due Process in That

(a) The Defendant Was Denied His Constitutional Right to Have Counsel Present From the Moment of His Arrest.

(b) The Defendant Was Deprived of His Constitutional Right Not to Be Subject to Unlawful Search.

The defendant was privileged to resist the removal of his clothing. This was an unreasonable search under the circumstances. The defendant told the officers who he was, where he lived, and where he went to school, and requested that he be permitted to call counsel who could readily prove his identity. This request was denied.

Instead of making a reasonable investigation to determine the identity of the prisoner in their custody by contacting the officials at Tulane Law School, or the prisoner's counsel, the police chose instead to determine whether or not the defendant was the suspect in question by the simple expedient of ripping off his clothes to determine whether or not he had a certain tatoo.

Under these circumstances, this was a violation of the defendant's constitutional rights, an unreasonable search [fol. 84] which the defendant was privileged to resist.

(c) The Defendant Was Denied His Constitutional Right to a Speedy Trial.

(d) The Defendant Was Denied His Constitutional Right to an Impartial Trial.

The Sixth Amendment to the Constitution of the United States provides that the accused shall enjoy the right to a speedy and impartial trial.

The Fourteenth Amendment provides for due process.

The case at Bar, taken at its entirety, from arrest to the present time, shows a complete denial of these constitutional guarantees.

The defendant was arrested on October 13, 1964 for vagrancy, reviling the police and resisting arrest. He was arraigned that night and tried on December 4th, 1964. In his behalf he introduced in evidence, testimony by the Dean of the Tulane Law School, Cecil Morgan, Professor Lowell Turrentine of the Law School, and Attorney Cuthbert Baldwin of New Orleans. The presiding Judge, Judge Bucaro, then refused to hear any more of the case and over the defendant's objection, continued the case indefinitely.

More than five months later, Judge Bucaro called the case for trial again. The case was heard on May 7th, counsel for the defendant coming from Shreveport, Loui- [fol. 85] siana, to appear. On May 7th, 1965, Judge Bucaro again continued the case to May 14th, 1965, over the strong objection of defendant's counsel. When it was pointed out that the defendant had a final examination at Tulane Law School on May 14th, 1965, Judge Bucaro informed the parties that he was continuing the case in retaliation for the defendant's attitude. When it was pointed out that the defendant's counsel had flown from Shreveport to appear, at considerable expense to the defendant, Judge Bucaro said that he understood that the defendant's father was a prominent attorney in Massachusetts and could therefore afford the added expense.

Thus the case was continued and heard again on May 14, 1965. In order to accommodate the two doctors present

in Court, they were allowed to testify first. Doctor Kohlmann Reed, a Dermatologist from New Orleans, testified in the defendant's behalf that the defendant was his patient, and on the day before his arrest had been examined by Doctor Reed for an unsightly skin disease over his chest and arms and was thereupon placed under treatment by Doctor Reed.

Further testimony was given by Doctor Richard Levy, a New Orleans Orthopedic Surgeon, who treated the defendant upon his release from the police station. He gave evidence of the beating that the defendant underwent while in custody.

After the prosecution rested, the defendant moved for a directed verdict. The Judge took the case under advise-
[fol. 86] ment and the half of the case No. 80503B was held up.

At this time the attorney for the prosecution and Judge Bucaro, decided that new complaints were necessary if the defendant was to be convicted of any crime. Therefore, the City Attorney went downstairs in the Courtroom and drew up the new complaints, in Case No. 83469A for resisting arrest and disturbing the public peace on October 13, 1964. These new complaints were immediately presented to the Court. The defendant objected to this procedure, but to no avail. The defendant was immediately arraigned.

All the witnesses were present necessary to try this case, and therefore the defendant requested an immediate trial, but Judge Bucaro refused to go forward with the trial and continued the case until May 21st, 1965. The case was later continued over the objection of the defendant, to July 16, 1965, for which the defendant had to fly from Massachusetts and his counsel had to come from Shreveport, Louisiana, to New Orleans.

On July 16, 1965, the half of the Case No. 83469A was heard and finished.

The foregoing portrays the atmosphere of the Court, and the attitude of the Judge in his systematic harassment of

the defendant in the trial of the incident of October 13, 1964.

To date Judge Bucaro has refused to decide Case No. 80305B which is an integral part of Case No. 83469A and which contains all the testimony in behalf of the defendant. [fol. 87] It also forms the basis of the defendant's appeal to the Criminal District Court.

By judicial manipulation Judge Bucaro prevented the Criminal District Court from having the complete record of this incident and the case has been decided with only the prosecution's side presented.

The fact that the defendant has been unable to get Judge Bucaro to decide his Motion for Directed Verdict, and therefore unable to get the transcript of Case No. 80503B before the Criminal District Court, denied the defendant his constitutional guarantee of a fair and impartial trial and due process of law.

Wherefore, your petitioner prays that a writ of certiorari issue directing His Honor, Thomas M. Brahney, Jr. Judge, Criminal District Court, Parish of New Orleans, State of Louisiana, to send up to your Honors a record of the case aforesaid, and directing the Municipal Court of New Orleans to send to your Honors the record of Case No. 80305B in order that the same may be assigned by this Court as by the Constitution and law of this State provided, to pronounce judgments thereon which said judgment your petitioner prays shall be a reversal of his conviction for "breach of the public peace."

Stephen R. Wainwright.

[fol. 88]

No. 192-168—Section "D"

Criminal District Court

Parish of Orleans

State of Louisiana

City of New Orleans,

versus

Stephen R. Wainwright.

Notice of Intention to Appeal to the Supreme Court of Louisiana

To the Honorable Thomas M. Brahney, Jr., Justice of the Criminal District Court, Parish of Orleans, State of Louisiana:—

You are hereby notified of the defendant's intention to apply to the Supreme Court of Louisiana for writs of Certiorari, Prohibition and Mandamus from Judgment on March 2nd, 1966, in the above captioned case.

Stephen R. Wainwright, 106 Main Street, Brockton, Massachusetts, Pro Se.

Affidavit of Intention to Appeal (omitted in printing).

[fol. 90] Supreme Court of Louisiana

City of New Orleans, State of Louisiana,

vs.

Stephen R. Wainwright.

Affidavit of Service (omitted in printing).

[fol. 91]

IN THE SUPREME COURT OF LOUISIANA

No. 48,108

CITY OF NEW ORLEANS,

v.

STEPHEN R. WAINWRIGHT.

WRITS REFUSED—March 24, 1966

In re: Stephen R. Wainwright applying for writ of certiorari, prohibition and mandamus.

The application is denied. The ruling of the Criminal District Court for the Parish of Orleans is correct.

WBH, JBF, JBH, FWH, EHMcC, JWS, FWS.

[fol. 92]

SUPREME COURT OF THE UNITED STATES

No. 275—October Term, 1966

STEPHEN R. WAINWRIGHT, Petitioner,

v.

CITY OF NEW ORLEANS, LOUISIANA.

ORDER ALLOWING CERTIORARI—January 9, 1967

The petition herein for a writ of certiorari to the Supreme Court of Louisiana is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.